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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[26 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Amnesty International written statement: the Human Rights Council should urge states to implement their human rights obligations related to the environment

Amnesty International welcomes the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the inclusion of Framework Principles (FPs) on human rights and the environment in the report.

Based on the premise that human rights and the environment are interrelated and interdependent, the FPs provide much needed guidance on most human rights obligations of States under international law in relation to the environment and offer practical explanation on how they should be interpreted and implemented. They also recognize the evolving nature of international law and the possibility that States may apply higher levels of protection under national or international law. States must implement the FPs while also abiding by the authoritative elaboration of international law by global human rights treaty monitoring bodies and the International Court of Justice and by their respective regional human rights mechanisms. These sources, taken together, provide a comprehensive statement of international law related to human rights and the environment.

Amnesty International stresses that ensuring a healthy environment is an existential issue for the realisation of human rights. For this reason, the issue must remain central in the work of the Human Rights Council.

Amnesty International also highlights the importance of the implementation of the FPs and other relevant human rights standards in order to address current global environmental challenges with severe impacts on human rights such as climate change and mass extinctions of various animal and plant species that humans need in order to enjoy our rights.[1]

Procedural obligations

Amnesty International welcomes the clear articulation in the FPs of procedural rights that States must respect, protect and fulfil in order to ensure the enjoyment of a healthy environment, including the right to access to information, opportunity to participate in decision-making and access to legal remedies. These rights are of particular importance in order to ensure that environmental decisions reflect the views, needs and rights of those most impacted by them and that human rights violations relating to the environment are effectively remedied.

More specifically, in relation to the right to participation, Amnesty International notes the obligation to "take additional steps to facilitate the participation of women and of members of marginalized communities".[2] This requires an analysis of existing formal and informal structures of participation and organization at the community/local level in order to understand processes that may facilitate or hinder the participation of women, girls and members of marginalised communities, and to develop, where needed, a targeted strategy to ensure their access to information and participation.[3]

Similarly, Amnesty International welcomes the inclusion in the FPs of the obligations to protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters, as well as to protect environmental human rights defenders. The implementation of these obligations is crucial considering the dangers to which those who defend human rights related to the land, territory and the environment are often exposed such as defamation and stigmatization, arbitrary arrest or criminal proceedings under spurious charges, death threats and killings. In many cases, the escalation of attacks is related to social tension leading to violence within communities, generated by a lack

1 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/34/49, 19 January 2017.

2 Paragraph 26.

3 Amnesty International, 2016. Preliminary observations to the UN Committees on the Elimination of Discrimination against Women's proposed general recommendation on gendered dimension of disaster risk reduction and climate change, http://www.ohchr.org/Documents/HRBodies/CEDAW/GenderRelated/AmnestyInternational.pdf

of adequate participation, genuine consultation and information regarding resource exploitation projects driven both by states and private companies.

Substantive obligations

Amnesty International notes the reference to address transboundary and global environmental harm through international cooperation. In particular, the organization welcomes the clarification that "no state should ever seek to withdraw from any of its international obligations to protect against transboundary or global environmental harm". This reflects the position taken by Amnesty International ahead of the announcement by United States President of his decision to withdraw the United States from the Paris Agreement on climate change.

In addition, Amnesty International believes that states must abide by other aspects of their extra-territorial obligations in relation to the environment. In particular, in line with international law States are responsible for harm that emanates from any place under their jurisdiction. States also have obligations to take steps to the maximum of their ability to prevent and remedy harm that emanates from other locations beyond the State's territory but which affects people located within their jurisdiction.

Amnesty International welcomes the reference to States' obligations to take precautionary measures against environmental harm on the basis that the "lack of full scientific certainty should not be used to justify postponing effective and proportionate measures" to prevent such harm,4 in accordance with principle 15 of the Rio Declaration on Environment and Development. The requirement to address such potential risks to people's human rights has been reflected in the jurisprudence of both national and international courts, including a number of decisions of the European Court of Human Rights, and, most recently, in an advisory opinion of the Inter-American Court for Human Rights.

The FPs include reference to such principle both under FP 11 related to the obligation to establish and maintain substantive environmental standards and under FP 13 which refers to the obligation of international cooperation. Amnesty International believes that such principle provides crucial guidance for the carrying out of prior assessments of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

Obligations in relation to those who are most vulnerable to environmental harms

Amnesty International also welcomes the inclusion of principles which spell out the obligations towards those who are most vulnerable to, or at particular risk of, environmental harm (FP 14) and specifically towards indigenous peoples and members of traditional communities (FP 15). Amnesty International has documented numerous cases of States' failure to consult with indigenous people and to obtain their free, prior, and informed consent before relocating taking measures that may affect their lands, territories or resources.[5] For example, the several instances of forced evictions of members of the Sengwer community in Embobut forest in Kenya since 2014 in relation to the implementation of an environmental conservation project funded by the European Union show the importance of implementing the obligations detailed in FP 15 and also those included under FP 16 related to the respect, protection and fulfilment of human rights in the action taken by States to address environmental challenges and pursue sustainable development.

The right to a safe, clean, healthy and sustainable environment

The report of the Special Rapporteur also makes the case for the recognition of a human right to a safe, clean, healthy and sustainable environment in a global instrument. Amnesty International strongly supports this call as formal

4 Paragraph 33 (c).

5 See for example Amnesty International, 2017. "A breach of human rights – The human rights implications of the Mount Polley Mine Disaster, British Columbia, Canada", http://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf; Amnesty International, 2017. "A Toxic State – Violations of the right to health of indigenous peoples in Cuninico and Espinar, Peru", http://www.toxicstate.pe/pdf/ToxicStateReportAIPeru.pdf.

recognition would provide a clearer framework for individuals and communities to defend their rights related to the environment and seek accountability for any violations. However, given that this right is already grounded in existing international human rights treaties,[6] the provisions of some regional instruments[7] and the constitutional provisions of more than 90 countries, States should not use the lack of explicit recognition of the right to a healthy environment in a global instrument as a reason to evade their obligations related to the environment based on existing human rights law.

Recommendations to the thirty-seventh regular session of the Human Rights Council

Amnesty International recommends that the Human Rights Council:

- Calls upon States to implement the Framework Principles on human rights and the environment presented in the report of the Special Rapporteur, as well as other aspects of international law, so as to ensure that human rights are central in the planning and implementation of environmental decisions and that the respect, protection and fulfilment of human rights leads to the enjoyment of a safe, clean, healthy and sustainable environment.

- Calls upon the Human Rights Council to continue its engagement on the issue related to human rights and the environment, including by facilitating the recognition of the right to a healthy environment in a global instrument and to renew the mandate of the Special Rapporteur.

6 See art. 7. b of the International Covenant on Economic, Social and Cultural Rights (ICESCR); art. 10(3) art. 12.2of ICESCR; art. 24 of the Convention on the Rights of the Child.

7 Art. 24 of the African Charter of Human and People's Rights; art. 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights guarantees; art. 38 of the 2004 Arab Charter on Human Rights.